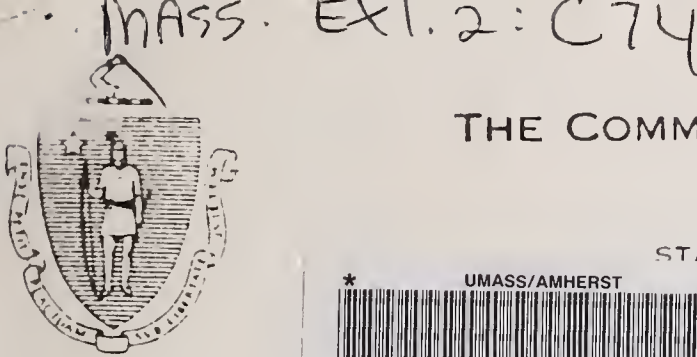




THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE DEPARTMENT

STATE HOUSE • BOSTON 02133



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MICHAEL S. DUKAKIS
GOVERNOR

COMMUTATION GUIDELINES and PETITION

Issued by Governor Michael S. Dukakis

November 20, 1983

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To the Advisory Board of Pardons and Other Interested Parties:

The Governor views commutation as an integral part of the correctional process. The real possibility of future commutation relief is intended to serve as a strong motivation for confined persons to utilize available resources for self-development and improvement efforts and as an incentive for them to become law-abiding citizens. The process of ascertaining whether or not rehabilitative ends of confinement within the correctional system have been met in individual cases is best administered by those public officials most equipped to make informed judgments on the persons seeking relief. Therefore, the Governor has established the following uniform policy to guide the Advisory Board of Pardons in considering petitions for commutation of sentence, and he expects to follow recommendations of the Advisory Board made in accordance with this policy.

1. Since commutation relief is an extraordinary remedy, the petitioner bears the responsibility of establishing by clear and convincing evidence that:
 - A. Petitioner has, within his or her capacity, made exceptional strides in self-development and improvement; or
 - B. Petitioner is suffering from a terminal illness or has a severe and chronic disability which would be mitigated by release from prison; or
 - C. Petitioner's further incarceration would constitute gross unfairness because of the basic equities involved.
2. The Governor must be satisfied that the petitioner has made responsible use of those rehabilitative programs available and has addressed appropriate treatment needs. To this end, a complete institutional progress report must be a part of the commutation file.

3. Recognizing that murder-in-the-first-degree commitments provide for no parole eligibility and that second degree commitments provide for parole eligibility after service of 15 years, the Governor declines to state precise periods which must be served before serious consideration will be given to a particular petition. However, the Governor generally will not grant commutation relief in first degree murder cases until the petitioner has served a minimum of fifteen years. The shorter the period of incarceration, the greater is the burden on the petitioner to establish that commutation is in the interest of justice, public safety and the rehabilitation of the petitioner.
4. The Governor seldom, if ever, will grant commutation relief where:
 - A. There is a viable administrative or judicial remedy available; or
 - B. The petitioner is convicted, but not yet sentenced; or
 - C. The relief sought is from a lengthy sentence which is not yet being served; or
 - D. Petitioner has not yet qualified for and made responsible use of furloughs; or
 - E. Petitioner has not yet progressed from a 24-hour maximum security confinement status. (This does not apply to persons confined in protective custody.)
5. The Governor expects to grant commutation relief and submit to the Executive Council all cases meeting these guidelines which have the unanimous recommendation of the Advisory Board. The Governor seldom, if ever, will grant commutation relief where the Advisory Board advises against the granting of such relief. Where the Advisory Board recommends by majority vote only, the Governor may act on the petition or may return it to the Advisory Board for further action. The Governor will act promptly on all recommendations received from the Advisory Board. In any case where the Governor disagrees with the recommendation of the Advisory Board, the Governor shall set forth where appropriate those actions petitioner should take to maximize the potential for favorable consideration in the future.
6. Notice Requirements. In addition to the notice requirements set forth in section 154 of Chapter 127 of the General Laws, prior to any public hearing by the Board on the petition:

- (1) The Board shall notify the Secretary of Public Safety of the pending petition.
- (2) The Board shall make every reasonable attempt to notify the petitioner's victim, the victim's immediate family or the victim's survivors of the pending petition. This shall include notification to be sent by certified mail, return receipt requested, to their last known address. If such notification fails to result in response by the victim, family, or survivors, then the Board shall make an attempt at notification by personal contact.
- (3) Said notification shall solicit comment on the petitioner's application for commutation.
- (4) An invitation to this person or persons to personally appear at the petitioner's hearing shall be included in the notification.

In homicide cases, before the Board may recommend action to the Governor, the Board should publish notices of its public hearing on the petitioner's application for a commutation once a week for two consecutive weeks prior to the date of public hearing. The notice should appear in a newspaper of general circulation in the county in which the crime occurred. Proof of publication -- a copy of the notice -- shall be retained by the Board and contained in the report to the Governor.

7. The report and recommendation of the Advisory Board to the Governor must include the following:

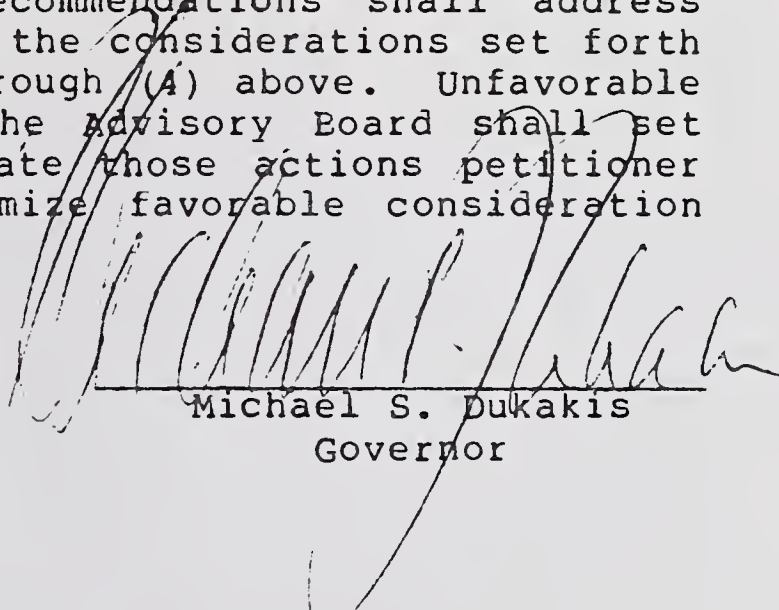
- A. A summary of the evidence presented at a public hearing, including the support petitioner has accrued both in the institution and in the community, and the nature and extent of opposition to the petition. The Commissioner of Correction, police and prosecution authorities, and where relevant, the victim's family, should be notified that the petition is pending. The names and addresses of those persons who have advanced an interest either in favor of, or in opposition to, commutation relief should be included; and
- B. An institutional progress report evidencing responsible use of available rehabilitative programs; and



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- C. A description of realistic community correctional and parole programs available to continue petitioner's rehabilitation; and
- D. A plan for reintegrating petitioner into normal community life. The Governor approves of the Advisory Board's practice of generally recommending commutation of a sentence to parole eligibility at a future date rather than a present date in order to make petitioners eligible for Chapter 777 programs before they are eligible for parole release; and
- E. A duplicate of the registration with the Secretary of State filed by counsel or other representative pursuant to G.L. Chapter 127, section 167; and
- F. The recommendation and vote of the Advisory Board. Favorable recommendations shall address in reasonable detail the considerations set forth in paragraphs (1) through (4) above. Unfavorable recommendations of the Advisory Board shall set forth where appropriate those actions petitioner should take to maximize favorable consideration in the future.



Michael S. Dukakis
Governor

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